

WORKING DRAFT

HOUSE BILL NO. _____

Medical malpractice-noneconomic damages.

Sponsored by: Representative(s) Lockhart

A BILL

for

1 AN ACT relating to a medical malpractice; specifying
2 legislative findings and purposes; specifying certain
3 procedures relating to medical malpractice claims; limiting
4 insurable noneconomic damages; creating a state noneconomic
5 damages account; authorizing payments of excess noneconomic
6 damages from the account as specified; providing for
7 repayment of monies paid from the account; modifying
8 licensure provisions to ensure repayment as specified;
9 providing definitions; providing an appropriation; making
10 conforming amendments; and providing for an effective date.

11

12 *Be It Enacted by the Legislature of the State of Wyoming:*

13

14 **Section 1.**

15

1 (a) The legislature finds that there is a medical
2 malpractice insurance crisis in Wyoming that is causing
3 physicians' professional insurance premiums to increase to
4 the point that some physicians practicing in some medical
5 specialties or subspecialties are unable to afford
6 insurance premium increases and are closing their practices
7 and leaving, or contemplating closing their practices and
8 leaving, the state. This medical malpractice insurance
9 crisis will translate into a broader health care crisis for
10 all citizens of the state which will impact the costs and
11 quality of and access to health care across the state. The
12 legislature further finds that Wyoming, as a
13 demographically frontier state, has difficulty recruiting
14 sufficient numbers of physicians to practice in more rural
15 areas of the state and that this circumstance is only
16 exacerbated by the current medical malpractice insurance
17 crisis.

18

19 (b) It is the purpose of this act to attempt:

20

21 (i) To retain physicians who may otherwise close
22 their practices in Wyoming because of the cost of medical
23 malpractice insurance;

24

1 (ii) To maintain an adequate number of physicians in
2 the state to meet the needs of Wyoming citizens,
3 particularly those citizens who could not otherwise afford
4 or obtain necessary medical care;

5

6 (iii) To recognize that quality health care is a
7 matter of fundamental importance to the individual needs of
8 Wyoming's citizens and to the social and economic welfare
9 of the state;

10

11 (iv) To recognize that limits on noneconomic
12 damages have been shown to reduce malpractice insurance
13 costs and to alleviate or lessen the extent of similar
14 medical malpractice insurance crises across the country and
15 that the legislature finds after extensive study and
16 consideration of various alternatives this approach to be
17 the most viable and least restrictive and problematic;

18

19 (v) To ensure that every citizen of this state
20 will be provided adequate medical care while simultaneously
21 protecting the rights of those citizens to have access to
22 the courts and to secure reasonable relief for wrongs
23 inflicted upon them without unnecessary imposition of
24 artificial limits on that relief.

1

2 **Section 2.** W.S. 1-1-130 is created to read:

3

4 **1-1-130. Noneconomic damages in medical malpractice**
5 **cases.**

6

7 (a) In any tort action involving a claim or claims of
8 malpractice against a physician and in which the issue of
9 noneconomic damages is submitted to a trier of fact, any
10 amount awarded by the trier of fact for noneconomic damages
11 in excess of five hundred thousand dollars (\$500,000.00) to
12 any claimant for any number of claims arising out of a
13 single transaction or occurrence shall be paid from the
14 account established in W.S. 26-33-302. Upon the expiration
15 of time for appeal or once the appeal is concluded,
16 certified copies of the final judgment specifying the
17 amount of noneconomic damages with original signatures
18 shall be provided to the state treasurer, state auditor and
19 the insurance commissioner.

20

21 (b) In any tort action involving a claim or claims of
22 malpractice against a physician and in which the claimant
23 seeks an award of noneconomic damages in excess of five
24 hundred thousand dollars (\$500,000.00), before the question

1 of liability may be presented to a jury, the jury shall be
2 advised that:

3

4 (i) Medical malpractice liability and the cost
5 of and access to medical care has been deemed by the people
6 of the state acting through its legislature to be a state-
7 wide problem affecting all citizens of Wyoming; and

8

9 (ii) In order to address the issues of medical
10 malpractice liability and the cost of and access to medical
11 care to serve legitimate state needs and the public
12 interest and to balance the state's interests in these
13 issues against the rights of all citizens to have access to
14 the courts to recover reasonable damages, a state account
15 has been created to provide for payment of noneconomic
16 damages awarded to a claimant in excess of five hundred
17 thousand dollars (\$500,000.00) following a trial of the
18 issues.

19

20 (c) In any tort action involving a claim or claims of
21 malpractice against a physician in which noneconomic
22 damages are claimed or may be awarded, the insurance
23 commissioner of this state shall be served with a copy of
24 process within sixty (60) days of filing suit and may

1 participate in the physician's defense if any claim is
2 sufficient to be a potential liability against the account
3 created by W.S. 26-33-302. Nothing in this subsection
4 shall be construed to compel the appearance or joinder of
5 the insurance commissioner of this state as a party.
6 Failure to serve a copy of process with the insurance
7 commissioner as required by this section shall prohibit any
8 claim upon the account established in W.S. 26-33-302.

9

10 (d) This section shall apply to any tort action in
11 which the act or omission giving rise to the cause of
12 action occurred on or after September 1, 2004.

13

14 (e) As used in this section:

15

16 (i) "Noneconomic damages" means any loss, harm,
17 damage or impairment suffered by a person as a result of
18 malpractice which is nonpecuniary and subjective in nature
19 and extent, including but not limited to pain, suffering,
20 inconvenience, mental anguish, emotional distress, loss of
21 society and companionship, loss of consortium,
22 disfigurement and any other intangible loss, harm, damage
23 or impairment

24

1 (ii) "Tort action" means a civil action for
2 damages for injury, death or loss to person or property
3 other than a civil action for damages for a breach of
4 contract or another agreement between persons or government
5 entities.

6

7 **Section 3.** W.S. 26-33-201 and 26-33-301 through 26-
8 33-304 are created to read:

9

10

ARTICLE 2

11

LIMITATION ON INSURANCE

12

13 **26-33-201. Limitation on insurance for noneconomic**
14 **damages.**

15

16 (a) No insurer shall after September 1, 2004, issue,
17 deliver for issuance in this state or renew any medical
18 malpractice liability policy of insurance which insures
19 against noneconomic damages in an amount exceeding five
20 hundred thousand dollars (\$500,000.00) to any claimant for
21 any number of claims arising out of a single transaction or
22 occurrence. To the extent that any medical malpractice
23 liability policy violates the provisions of this section,
24 that portion of the policy is unenforceable, and any

1 premium paid for that portion of the policy made
2 unenforceable by this subsection shall be refunded.

3

4 (b) For purposes of this section "noneconomic
5 damages" means as defined in W.S. 1-1-130 (e) (i).

6

7

ARTICLE 3

8

NONECONOMIC DAMAGES ACCOUNT

9

10 **26-33-301. Definitions.**

11

12 (a) As used in this article:

13

14 (i) "Account" means the noneconomic damages
15 account within the trust and agency fund;

16

17 (ii) "Noneconomic damages" means as defined in
18 W.S. 1-1-130 (e) (i);

19

20 (iii) "Tort action" means as defined in W.S. 1-
21 1-130 (e) (ii).

22

23 **26-33-302. Noneconomic damages account.**

24

1 (a) There is created a noneconomic damages account
2 within the trust and agency fund, the monies of which shall
3 be used by the commissioner for the purposes stated in this
4 article. The account and any investment income from it
5 shall be invested and reinvested by the state treasurer
6 pursuant to W.S. 9-4-711. Investment income shall be
7 redeposited to the account . Funds within the account,
8 including investment income, are continuously appropriated
9 for the purposes of this article.

10
11 (b) The commissioner may use the monies of the
12 account to purchase insurance for the account and its
13 obligations. The commissioner shall be served with a copy
14 of process and may participate in a physician's defense if
15 any claim is sufficient to be a potential liability against
16 the account. Reasonable legal expenses approved by the
17 commissioner and incurred in defense against any
18 malpractice claim are payable out of the account.

19
20 (c) All expenses of protecting and administering the
21 account or related to the purchase of insurance for the
22 account shall be paid from the account. The commissioner
23 may employ financial, administrative or legal consultants
24 to assist in the account management.

1

2 (d) The commissioner may purchase reinsurance, if
3 needed, to protect the account from depletion due to
4 judgment against it. Costs of reinsurance shall be paid
5 from the monies of the account.

6

7 **26-33-303. Payments from account.**

8

9 (a) To receive funds from the account, the award shall
10 be:

11

12 (i) For noneconomic damages in excess of five
13 hundred thousand dollars (\$500,00.00) to any claimant for
14 any number of claims arising out of a single transaction or
15 occurrence; and

16

17 (ii) Awarded after and as a result of a trial,
18 and upon the expiration of time for appeal or once the
19 appeal is concluded. Settlements and other methods by
20 which disputes may be resolved shall not give rise to
21 payment from the fund.

22

23 (b) The state auditor shall issue a warrant in
24 satisfaction of each claim submitted to him against the

1 account after the receipt of the certified copy of the
2 final judgment from the court having jurisdiction with
3 original signatures upon the expiration of time for appeal
4 or once the appeal is concluded. The warrant shall be for
5 the amount exceeding five hundred thousand dollars
6 (\$500,00.00) of noneconomic damages to any claimant for any
7 number of claims arising out of a single transaction or
8 occurrence set forth in the judgment. The state auditor
9 shall notify the Wyoming state board of medicine of any
10 amount paid pursuant to this subsection.

11

12 (c) Expenditures from the account created in W.S. 26-
13 33-302 shall not exceed the amount of funds within the
14 account.

15

16 **26-33-304. Exemptions.**

17

18 This article is exempt from and has no application to the
19 Wyoming Insurance Guaranty Association Act.

20

21 **Section 4.** W.S. 33-26-411 is created to read:

22

23 **33-26-411. Repayment to noneconomic damages account.**

24

1 (a) A licensee on whose behalf funds have been paid
2 from the noneconomic damages account within the trust and
3 agency fund created in W.S. 26-33-302 shall be liable to
4 the state for the amount paid. Repayment to the state of
5 these funds by the licensee may be made by structured payments
6 to the state or by the provision of medical care to the
7 persons specified in subdivision (c)(i)(A)(II) of this
8 section.

9
10 (b) Within thirty (30) days of receipt of
11 notification from the state auditor of any amount paid from
12 the noneconomic damages account, the board shall notify the
13 licensee of the amount for which the licensee is liable.
14 The board and the licensee may negotiate the terms and
15 conditions of repayment. In negotiating the terms and
16 conditions of repayment the board shall consider the
17 licensee's financial status, the number of physicians
18 practicing in the same specialty and the feasibility of
19 repayment by the provision of free or reduced price medical
20 care to persons specified in subdivision (c)(i)(A)(II) of
21 this section.

22

23 (c) The board shall by rule and regulation establish:

24

1 (i) General terms and conditions of repayment,
2 which shall include options for the licensee to:

3

4 (A) Repay the liability by agreeing to:

5

6 (I) Continue to practice in this state
7 until all funds have been repaid;

8

9 (II) Provide free or reduced price
10 medical care to Wyoming residents qualified under the
11 Wyoming Medical Assistance and Services Act, the Wyoming
12 Health Insurance Pool Act or the Wyoming uninsured child
13 health insurance program; and

14

15 (III) Submit documentation to
16 establish that the licensee has complied with the terms and
17 conditions of repayment.

18

19 (B) Or if not meeting the provisions of
20 subparagraph (a) of this paragraph, repay the liability
21 over a period of time not to exceed twenty (20) years at an
22 annual interest rate not to exceed two percent (2%).

23

1 (ii) The rates at which the provision of medical
2 care to the persons specified in subdivision (c)(i)(A)(II)
3 of this section shall be used to repay the funds.

4
5 **Section 5.** W.S. 26-33-101(a)(intro), 26-33-102(a) and
6 (b), 26-33-103, 26-33-105(a), 26-33-109 and 26-33-110(a)
7 are amended to read:

8
9 **26-33-101. Definitions.**

10
11 (a) As used in this ~~chapter~~ article:

12
13 **26-33-102. Qualification.**

14
15 (a) To be qualified under this ~~chapter~~ article, a
16 physician shall annually purchase health care professional
17 liability insurance coverage of not less than fifty
18 thousand dollars (\$50,000.00) per occurrence for any act,
19 error or omission relating to medical care rendered during
20 the policy year and pay the surcharge pursuant to W.S.
21 26-33-105(c).

22
23 (b) A physician failing to qualify under this section
24 is not covered by this ~~chapter~~ article.

1

2

26-33-103. Insurance coverage.

3

4 A qualified physician shall be insured in a minimum amount
5 of fifty thousand dollars (\$50,000.00) against a claim for
6 malpractice. Any award or settlement adjudicated or
7 allowed on a malpractice claim in excess of fifty thousand
8 dollars (\$50,000.00) or limits of other underlying coverage
9 if greater occurring during any year in which the physician
10 is qualified under this ~~chapter~~ article shall be paid from
11 the account subject to the limitation that obligations from
12 the account shall not exceed one million dollars
13 (\$1,000,000.00) in any calendar year for one (1) or more
14 awards or settlements against an individual physician.

15

16

26-33-105. Medical liability compensation fund.

17

18 (a) There is created a medical liability compensation
19 account within the trust and agency fund, the monies of
20 which shall be collected by the commissioner for exclusive
21 use for the purposes stated in this ~~chapter~~ article. The
22 account and any investment income from it shall be held in
23 trust and invested and reinvested by the state treasurer
24 pursuant to W.S. 9-4-711.

1

2

26-33-109. Contents of policies.

3

4 Any policy issued under this ~~chapter~~ article is presumed to
5 comply with this ~~chapter~~ article. The insurer assumes all
6 obligations to pay an award imposed against its insured
7 under this ~~chapter~~ article and no policy termination by
8 cancellation is effective unless at least ninety (90) days
9 before the effective date of the cancellation both the
10 insured and the commissioner receive at their offices, a
11 written notice giving the date upon which termination is
12 effective.

13

14

26-33-110. Failure to pay claims.

15

16 (a) If a professional liability insurer, in the
17 regular course of business, fails to pay its portion of any
18 judgment rendered against any physician or any other person
19 insured under this ~~chapter~~ article, the commissioner shall
20 suspend that insurer's certificate of authority until the
21 portion of the judgment allocable to the insurer is paid in
22 full, provided the insurer has the right to a hearing in
23 accordance with W.S. 26-3-115(b).

24

1 **Section 6.** W.S. 33-26-402(a) by creating a new
2 paragraph (xxxv) is amended to read:

3

4 **33-26-402. Grounds for suspension; revocation;**
5 **restriction; imposition of conditions; refusal to renew or**
6 **other disciplinary action.**

7

8 (a) The board may refuse to renew, and may revoke,
9 suspend or restrict a license or take other disciplinary
10 action, including the imposition of conditions or
11 restrictions upon a license on one (1) or more of the
12 following grounds:

13

14 (xxxv) Failure or refusal to fulfill the terms
15 and conditions of repayment under W.S. 33-26-411.

16

17 **Section 7.** There is appropriated from the budget
18 reserve account to the noneconomic damages account created
19 by W.S. 26-33-302 twenty-four million dollars
20 (\$24,000,000.00) to implement the purposes of this act.

21

22 **Section 8.** This act is effective immediately upon
23 completion of all acts necessary for a bill to become law

1 as provided by Article 4, Section 8 of the Wyoming
2 Constitution.

3

4

(END)